IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 15270 of 2005

Between:

Sarda Agro Oils limited, Plot No.655 & 656, Satamrai, Gaganpahad, R.R.District rep., by its Authorised Signatory Sri Jagadish Sarda.

..... PETITIONER

AND

Commercial Tax Officer, Special Commodities Circle, Saroornagar Division, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or order or direction more particularly in the nature of writ of certiorari, calling for records relating to the Assessment Year 2002-03 and consequently quash the Assessment Proceedings Rc.No.SAR/10/1/2002/2002-03(CST), dt.30-6-2005 passed by the Commercial Tax Officer, Special Commodities Circle, Saroornagar Division, Hyderabad and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.S.CHAKRAPANI.

Counsel for the Respondent : GP FOR COMMERCIAL TAX & Mr. K.RAJI REDDY SPL.S.C. FOR CT.

The Court at the stage of admission made the following :

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THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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W.P.NO.15270 OF 2005

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> "To issue Writ or order or direction more particularly in the nature of Writ of Certiorari, calling for records relating to the Assessment Year 2002-03 and consequently quash the Assessment Proceedings Rc.No.SAR/10/1/2002/2002-03(CST), dt. 30.6.2005 passed by the Commercial Tax Officer, Special Commodities Circle, Saroornagar Division, Hyderabad and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner is a limited company carrying on the activity of manufacturing refined oils and vanaspathi and registered as a dealer under the A.P. General Sales Tax Act, within the jurisdiction of the respondent for the purpose of assessment etc. For the assessment year 2002-03, the petitioner-company filed returns declaring a turnover of Rs.43.66 crores of which according to it an amount of Rs.1.54 crores

relates to inter-state sales and it claims that the entire turnover is exempted under various provisions of the Act (the details of which are not necessary for the purpose of the present writ petition).

It is the further case of the petitioner-company that the respondent issued a show cause notice dated 10-05-2004, proposing to make a provisional assessment, which is to the following effect:

"……..

on verification of the CST returns filed and the statements relating to the consumption of waybills, it is noticed that the assesses have effected the sales of edible oil and soap stock/muddy and consignment sales of edible oil as detailed below:

1. Inter-state sales of edible

   oils soap stock/muddy Rs. 5,74,04,106-00

2. Consignment sales of

   Edible oil Rs. 10,24,00,000-00

   Rs. 15,98,00,000-00

The assesses have claimed exemption on high-seat and consignment sales of edible oil. But in support of the claim, the assesses have not submitted any documentary evidence such as bill of lading, letter of credit, Excise clearance Certificate, Form "F" declaration and sale patties.

Therefore it is propose to pass provisional order for the year 2002-03 under the CST Act on the following turnovers.

Gross Turnover Rs. 15,98,04,106-00

Exempted turnover Rs. Nil

Net turnover Rs. 15,98,04,106-00

The above net turnover is liable to tax @ 10%."

The petitioner-company claims that it filed objections on 30-08-2004 and it is also its further claim in the affidavit, that pursuant to the objections filed by it, the provisional assessment proceedings were dropped. However, the learned Government Pleader for Commercial Tax, on the basis of the instructions and record submitted that the provisional assessment was not, in fact, dropped, but was completed. But, at the same time, there is nothing on record to indicate that the final orders passed in the provisional proceedings, were ever communicated to the petitioner.

It appears that there was a search on the petitioner's premises somewhere in the month of April 2005. According to the petitioner, during the course of the said proceedings, account books as well as certain computer hard disks containing the details of its business transaction, were seized. Thereafter, the respondent issued four show cause notices on 17-05-2005 relating to the assessment years 2003-04 and 2004-05; two notices under A.P.G.S.T. Act and the other two under C.S.T. Act, proposing to disallow exemptions under the C.S.T. Act and estimating turnover under A.P.G.S.T. Act. It appears that aggrieved by the said show cause notices, the petitioner-company had earlier filed four writ petitions in this Court contending that proposed assessment without returning the books etc., so seized, would be in violation of the principles of natural justice and prayed that the proposed assessments be stalled until the said books are returned. It appears that all the four writ petitions were admitted and interim orders were granted staying all further proceedings pursuant to the show cause notices. We are informed that all the said four writ petitions are still pending.

With regard to the assessment year 2002-03, the respondent issued a notice dated 17-05-2005 calling up the petitioner to produce the necessary material for making the assessment. The said notice dated 17-05-2005, by which, the petitioner was called upon to file objections to the said show cause notice on or before 15 days from the date of receipt of the same, according to the petitioner, was served on 25-05-2005. The petitioner claims to have addressed a letter dated 06-06-2005 to the respondent requesting time for a period of one month for filing its objections. It is also the further allegation of the petitioner-company that no communication was

received by it in response to the said request. The petitioner further alleges that it offered to file all the relevant documents, more particularly, the “F” forms on 04-07-2005 and the respondent declined to receive the same.

In the mean while, the respondent served an assessment order dated 30-06-2005 on the petitioner on 05-07-2005. The respondent declined to treat the sums of Rs.14.22 crores and Rs.19.22 crores representing consignment sales and stock transfer sales respectively as entitled for exemption and also added turnover of Rs.9.46 crores, which in view of the respondent is the estimated difference in inter-state sales. Hence, the present writ petition.

Rule-12, subrule-7 of the Central Sales Tax (Registration & Turnover) Rules 1957, requires various declarations and certificates enumerated there in, as proof of the fact to establish that the transactions covered by the said documents are exempted from the Central Sales Tax. Under Rule 6A of the Rules framed under Central Sales Tax Act, the said proof shall be furnished to the prescribed authority up to the time of assessment by the first assessing authority. Obviously the first assessing authority, in turn has to obtain the same from the dealer. However, proviso to Rule 7 enables the prescribed authority to receive such documents within such further time as that authority may permit having regard to the facts and circumstances of the case.

In the background of the above mentioned facts, the petitioner prays that it may be given an opportunity to establish that it is entitled to claim exemption on various amounts of turnover and which opportunity was not made available to it because of the fact that though it sought extension of time to produce the necessary evidence, there was no communication from the respondent either accepting or denying the same.

The learned counsel for the petitioner placed an earlier Division Bench order of this Court in Writ Petition No.5302 of 2005 dated 8th April 2005, wherein the Division Bench took the view, in almost similar circumstances, that the assessment order made was in gross violation of the principles of natural justice and therefore, set aside the assessment in question there and further directed that the said assessment should be treated as a show cause notice and the petitioner be given an opportunity to explain his case and produce necessary evidence in support of his explanation within a period of six weeks from the date of receipt of a copy of the said order.

The learned Government Pleader for Commercial Tax, on the other hand submitted that the order is an appealable order and therefore, this Court would not, in the normal circumstances, entertain a writ petition, where such an effective alternative remedy, such as the statutory appeal, is available. However, there is no categoric rebutting statement from the Government Pleader, regarding the allegation of the petitioner that his request for extension of time to file objections to the show cause notice, was not disposed of. We therefore accept the assertion of the petitioner-company that though it sought such an extension, it was neither accepted nor refused. At any rate the rejection was not communicated. Therefore, there is a failure of natural justice.

Alternative remedy is normally not considered to be a factor to be taken into consideration while exercising the discretional jurisdiction under Article 226 of the Constitution, where the impugned order is passed in violation of the principles of natural justice.

In the circumstances, the writ petition is disposed of at the stage of admission directing the respondent to treat the assessment order dated 30-06-2005 as to be a show cause notice and after permitting the writ petitioner to offer its explanation and produce necessary proof in support of its explanation within a period of ten days from today and pass appropriate orders in accordance with law.

J.Chelameswar, J

M.Venkateswara Reddy, J

Note:

Issue copy by tomorrow.

(bo)

mrk

20th July 2005

To

1. The Commercial Tax Officer, Special Commodities Circle, Saroornagar Division, Hyderabad.

2. Two CCs to the G.P. for Commercial Tax, High Court of A.P., Hyderabad (OUT).

3. Two CD copies.

*Form-NIC-OGS/WP{**RS**}*